



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC**

Issued by the Department of Transportation on June 18, 1999

NOTICE OF ACTION TAKEN -- DOCKET OST-99-5749

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Application of **Delta Air Lines, Inc. and Air Jamaica, Ltd.** filed **5/28/99** for:

XX Exemption for two years under 49 U.S.C. 40109 for Delta to provide the following service:

Scheduled foreign air transportation of persons, property, and mail (a) between Atlanta, Los Angeles, New York, and Miami, on the one hand, and Grenada, on the other hand; and (b) between Los Angeles, on the one hand, and Antigua and St. Lucia, on the other hand. Delta requests authority to integrate this exemption with all of Delta's existing certificate and exemption authority. Delta intends to operate this service under a code-share arrangement with Air Jamaica.¹

XX Exemption for two years under 49 U.S.C. 40109 for Air Jamaica to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between Montego Bay and Kingston, Jamaica, on the one hand, and Phoenix and Salt Lake City, on the other hand. Air Jamaica intends to operate this service via Atlanta under a code-share arrangement with Delta.

XX Statement of Authorization for an indefinite duration under 14 CFR Part 212 for Delta to:

Display Air Jamaica's designator code on flights operated by Delta between Atlanta, on the one hand, and Los Angeles, Phoenix, and Salt Lake City, on the other hand, on a blind-sector basis for carriage of Air Jamaica's Caribbean-U.S. traffic.

XX Statement of Authorization for an indefinite duration under 14 CFR Part 212 for Air Jamaica to:

Display Delta's designator code on flights operated by Air Jamaica (a) between Los Angeles, on the one hand, and Montego Bay and Kingston, Jamaica, on the other hand; and (b) between Montego Bay, Jamaica, on the one hand, and Grenada, Bonaire, Barbados, Antigua, and St. Lucia, on the other hand, for the carriage of Delta's traffic between the United States and these Caribbean points.

Applicant rep: **Robert E. Cohn for Delta (202) 663-8060 and George U. Carneal for Air Jamaica (202) 637-6546**
DOT Analyst: **Michael D. Bodman (202) 366-9667**

DISPOSITION

XX Granted, subject to conditions (see below).

¹ By Notices of Action Taken dated December 3, 1997 (Docket OST-97-3051 and undocketed), the Department granted Delta and Air Jamaica (referred to collectively as the "Joint Applicants") the authority to provide reciprocal code-sharing services between the United States and certain points in the Caribbean. The authority for these code-share services expired on December 3, 1998, but has been kept in force pursuant to the provisions of the Administrative Procedure Act, 5 U.S.C. 558 (c), as implemented by 14 CFR Part 377, pending action on the Joint Applicants' timely filed renewal application.

The above action pursuant to the Joint Applicants' exemption authorities was effective when taken: June 18, 1999, through June 18, 2001.

The above action pursuant to the Joint Applicants' statements of authorization was effective when taken: June 18, 1999, and will remain in effect, subject to the conditions described below.

Action taken by: Paul L. Gretch, Director
Office of International Aviation

XX The exemption authority granted Delta to serve Antigua and St. Lucia is consistent with the aviation agreement governing air services between the U.S. and Antigua & Barbuda and the aviation agreement governing air services between the U.S. and St. Lucia. The exemption authority granted Delta to serve Grenada is consistent with the overall state of aviation relations between the U.S. and Grenada.

XX The exemption authority granted to Air Jamaica to serve Phoenix and Salt Lake City is consistent with the overall state of aviation relations between the U.S. and Jamaica.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

XX Holder's certificate of public convenience and necessity (Delta)

XX Holder's foreign air carrier permit (Air Jamaica)

XX Standard Exemption Conditions (attached)

Conditions:

(a) The statements of authorization will remain in effect only as long as (1) Delta and Air Jamaica continue to hold the necessary underlying authority to operate the code-share services at issue, and (2) the code-share agreement providing for the code-share operations remains in effect.²

(b) Delta and/or Air Jamaica must promptly notify the Department (Office of International Aviation) if the code-share agreement providing for the code-share operations is no longer effective or the carriers decide to cease operating any or all of the approved code-share services.³

(c) The code-sharing operations authorized herein must comply with 14 CFR 399.88 and with any amendments to the Department's regulations concerning code-share arrangements that may be adopted.⁴ Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere, and that the carrier selling such transportation (*i.e.* the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the passenger, and that the passenger liability of the operating carrier be unaffected. Further, the operator shall not permit the code of its U.S. code-sharing partner to be carried on any flight that enters, departs, or transmits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition.

(d) The authority granted here is specifically conditioned so that neither Delta nor Air Jamaica shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

(e) The route integration authority granted Delta is subject to the condition that any service provided under the exemption shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award of the route integration authority requested should be construed as conferring upon Delta rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S.

² We note that the code-share agreement as submitted did not include provisions regarding exclusive dealings between the code-share parties. Should the parties subsequently decide to amend their code-share agreement or any other agreement between them to include any provision relating to an exclusive arrangement between the parties regarding their code-share services, that amended language must first be submitted for consideration by the Department.

³ We expect that this notification be received within ten (10) days of such non-effectiveness or of such decision.

⁴ On March 8, 1999, the Department adopted a new regulation, Part 257, governing code-share operations. That regulation becomes effective on July 13, 1999.

carrier entry is limited unless Delta notifies us of its intent to serve such a market and unless and until the Department has completed any necessary selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited-entry route rights that are included in Delta's authority by virtue of the route integration exemption granted here, but that are not then being used by Delta, the holding of such authority by route integration will not be considered as providing any preference for Delta in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

Remarks:

On the basis of data officially noticeable, we found the applicants qualified to provide the services authorized.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) immediate action was required and was consistent with Department policy; (2) grant of the exemptions was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR § 385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

U.S. CARRIER
Standard Exemption Conditions

In the conduct of operations authorized by the attached notice, the applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with the applicable requirements of the Federal Aviation Administration Regulations; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.

FOREIGN AIR CARRIER CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
 - (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or
 - (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, comply (except as otherwise provided in the applicable bilateral agreement) with the Department's rules governing charters (including CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).